



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

Washington, D.C. 20570

Tel. (202) 273-1991

March 28, 2008

W-3149

CASES SUMMARIZED
VISIT WWW.NLRB.GOV FULL TEXT

Bloomfield Health Care Center	Bloomfield, CT	1
California Gas Transport, Inc.	Nogales, AZ	1
CNN America, Inc.	Washington, DC	2
Midwest Generation	Chicago, IL	2
SFO Good-Nite Inn, LLC	South San Francisco, CA	2

OTHER CONTENTS

List of Decisions of Administrative Law Judges	3
No Answer to Complaint Case	4
Test of Certification Case	4

<p>List of Unpublished Board Decisions and Orders in Representation Cases</p> <ul style="list-style-type: none"> • Contested Reports of Regional Directors and Hearing Officers • Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders 	4
---	---

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlr.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Bloomfield Health Care Center (34-CA-11512 et al., 34-RC-2172; 352 NLRB No. 39) Bloomfield, CT March 20, 2008. The Board, in a 2-0 decision, found that the Respondent unlawfully interrogated employees, denied access to its facility to off duty employees, suspended an employee, unilaterally eliminated the rehabilitation aide position and transferred its duties to certified nursing assistants, and unilaterally changed the work schedules of two employees. The Board affirmed in part and reversed in part a 2007 decision of the administrative law judge who found that (1) the Respondent's preventing off duty employees from talking to other employees at its facility on May 18, 2006 violated Section 8(a)(1) of the Act; (2) the Respondent's suspension of employee Winsome Kitson violated Section 8(a)(1) and (3); (3) the Respondent did not otherwise violate the Act; and (4) the objections to the election are without merit. [\[HTML\]](#) [\[PDF\]](#)

In addition to the violations found by the judge, the Board found that the Respondent (1) violated Section 8(a)(1) by interrogating employees, through Administrator Penni Martin, about their union activities; (2) violated Section 8(a)(5) by unilaterally eliminating the rehabilitation aide position held by employee Carol Blackwood-Lindsey and transferring the position's duties to certified nursing assistants; and (3) violated Section 8(a)(5) by unilaterally changing the work schedules of employees Carol Blackwood-Lindsey and Avril Wallace.

The Board also adopted the judge's finding without merit the Respondent's election objections alleging that (1) Kitson's conduct in protesting the Respondent's unfair labor practice interfered with the election; and (2) the Union engaged in objectionable conduct by offering to waive dues for eligible voters who paid dues at other facilities represented by the Union in connection with their second jobs.

(Members Liebman and Schaumber participated.)

Charges filed by New England Health Care Employees District 1199, SEIU; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Hartford, Feb. 13, 14, and 15, 2007. Adm. Law Judge Raymond P. Green issued his decision March 30, 2007.

California Gas Transport, Inc. (28-CA-21287; 352 NLRB No. 38) Nogales, AZ March 19, 2008. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by assigning its Nogales-based drivers to deliver propane to Juarez and Mexicali, Mexico without first bargaining with the Union. The Board found it unnecessary to pass on the judge's dismissal of the allegation that the Respondent violated Section 8(a)(5) and (1) by withdrawing its recognition of the Union. In doing so, the Board found that any remedy imposed for this violation would be duplicative of a bargaining order already imposed by the Board in a prior case. *California Gas Transport, Inc.*, 347 NLRB No. 188 (2006), enf. 507 F.3d 847 (5th Cir. 2007). [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman and Schaumber participated.)

Charge filed by General Teamsters (Excluding Mailers), State of Arizona, Local 104; complaint alleged violations of Section 8(a)(5) and (1). Hearing at Tucson, July 18 and 19, 2007. Adm. Law Judge James M. Kennedy issued his decision Sept. 26, 2007.

CNN America, Inc. (5-CA-31828, 33125; 352 NLRB No. 40) Washington, DC March 20, 2008. The administrative law judge ruled, during the hearing, that the Respondent must produce documents reviewed by witnesses prior to their testimony and within 6 months prior to the hearing, pursuant to Federal Rule of Evidence 612. The Board granted the Respondent's special appeal and found that the judge's ruling is inconsistent with Rule 612 because the judge did not determine that the documents at issue were reviewed by the witnesses to refresh memory for the purpose of testifying. Accordingly, the Board vacated the judge's ruling and remanded the proceeding to the judge for further action consistent with its order. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman and Schaumber participated.)

Midwest Generation (13-CA-39643-1; 352 NLRB No. 36) Chicago, IL March 17, 2008. The Board accepted the remand of the Seventh Circuit Court of Appeals and found, as instructed by the court, that the Respondent's partial lockout violated Section 8(a)(3) and (1) of the Act. To remedy the unlawful lockout, the Board ordered the Respondent to make employees whole for any loss of earnings and other benefits suffered as a result of being unlawfully locked out. In addition, the Board remanded to the administrative law judge the issues of whether the unlawful partial lockout coerced Electrical Workers IBEW Local 15 and its members to ratify the Respondent's contract offer, thereby voiding the parties' collective-bargaining agreement, and whether other remedial relief is appropriate. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman and Schaumber participated.)

SFO Good-Nite Inn, LLC (20-CA-32754; 352 NLRB No. 42) South San Francisco, CA March 20, 2008. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign a union disaffection petition, and by threatening employees with discharge or loss of benefits, and by promising benefits, in order to coerce employees to sign the petition. The Board also affirmed the judge's findings that the Respondent violated Section 8(a)(3) and (1) by discharging two employees in order to discourage union activities and union membership, and that it violated Section 8(a)(5) and (1) by withdrawing recognition from and refusing to bargain with the Union. [\[HTML\]](#) [\[PDF\]](#)

With respect to the discharges, the Board found inter alia that because the Respondent's only proffered reason for the discharges was pretextual the Respondent necessarily failed to show that it would have discharged the employees even in the absence of their protected conduct. As to the withdrawal of recognition, the Board found inter alia that, under *Hearst Corp.*, 281 NLRB 764 (1986), affd. mem. 837 F.2d 1088 (5th Cir. 1988), the Respondent's contention that the petition was not tainted by its unfair labor practices because there was no evidence that the employees who signed it knew of the unlawful conduct was unavailing. Member Schaumber acknowledged that *Hearst Corp.* was extant Board law and applied it for the purpose of deciding this case. He stated his own view that even unfair labor practices such as those in this case might not taint a petition if there was affirmative evidence that a majority of unit employees both signed the petition and were unaffected by the unlawful conduct (there was no such showing in this case).

The Board found it unnecessary to pass on the judge's finding that the petition was tainted under the standards set forth in *Master Slack Corp.*, 271 NLRB 78, 84 (1984), or on his finding that the collective-bargaining agreement was a bar to the Respondent's withdrawal of recognition. In regard to the latter finding, Member Liebman, who dissented in *Shaw's Supermarkets, Inc.*, 350 NLRB No. 55 (2007), agreed that it was unnecessary to address the issues presented in *Shaw's* for the purpose of deciding this case.

(Members Liebman and Schaumber participated.)

Charge filed by Unite Here! Local 2; complaint alleged violations of Section 8(a) (1), (3), and (5). Hearing at San Francisco, April 18-20 and May 23, 2006; and at San Mateo, June 13, 2006. Adm. Law Judge Jay R. Pollack issued his decision Sept. 28, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Verizon New York, Inc. (Communications Workers Local 1115) New York, NY March 19, 2008. 3-CA-26036, et al.; JD-16-08, Judge Michael A. Rosas.

SCM, USA, a/k/a Beverage Plus, Inc. (Industrial Workers of the World 460/640) Brooklyn, NY March 21, 2008. 29-CA-28626; JD(NY)-10-08, Judge Joel P. Biblowitz.

Laborers Local 578 (Shaw Stone and Webster Construction, Inc) (an Individual) Pueblo, CO March 21, 2008. 27-CB-4935; JD(SF)-11-08, Judge Clifford H. Anderson.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

National Fabco, Mfg., Inc. (Sheet Metal Workers Local 202) (14-CA-29107; 352 NLRB No. 37) St. Louis, MO March 17, 2008. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Aztar Indiana Gaming Co., LLC, d/b/a Casino Aztar (Auto Workers) (25-CA-30558; 352 NLRB No. 41) Evansville, IN March 19, 2008. [\[HTML\]](#) [\[PDF\]](#)

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND DIRECTION [that Regional Director open and count ballot]

Mille Lacs Health System, Onamia, MN, 18-RD-2606, March 19, 2008
(Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

M & M Sheet Metal & Steel Fabricators, Inc., Williamsport, PA, 6-RM-729, March 18, 2008
(Members Liebman and Schaumber)
Tri-Pak Machinery, Inc., Harlingen, TX, 16-RD-1553, 16-RM-773, March 18, 2008
JBK, Inc., d/b/a Bluegrass Satellite, Indianapolis, IN, 25-RC-10327, March 20, 2008
(Members Liebman and Schaumber)
